

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,

RICHARD A. DRAKE,
Bar No. 025449

Respondent.

PDJ-2017-9009

AMENDED ORDER OF SUSPENSION

[State Bar No. 17-0220-C]

FILED FEBRUARY 23, 2017

Pursuant to Rule 47(h)(4)(A)¹ the State Bar filed on January 23, 2017, a verified notice and request for Order (“Request”) to show cause re: contempt. Proof of service upon Mr. Drake was attached. No response has been filed by Mr. Drake.

The Presiding Disciplinary Judge (“PDJ”) having considered the request, ordered Richard A. Drake, Bar No. 025449, to appear on **Thursday**, February 23, 2017 at 10:00 a.m., and show cause why he should not be held in contempt for his failure to comply with the subpoena served upon him. In compliance with Rule 47(h)(4)(A), Mr. Drake was informed a finding of contempt could cause a sanction of summary suspension of the license to practice law of a respondent.

On February 23, 2017, Shauna R. Miller, Senior Bar Counsel, appeared on behalf of the State Bar. Mr. Drake did not appear.

¹ Unless stated otherwise, rule references are to the Rules of the Ariz. Supreme Ct.

FINDINGS OF FACT

An investigative subpoena was issued by chief bar counsel pursuant to Rule 47(h)(1) on November 10, 2016. The subpoena required Mr. Drake to appear for his deposition and to produce specified documents. The deposition was set for November 28, 2016. The subpoena complied with Rule 47(i). In bold print it stated “Your Right to Object” which included the required language stating the ability of Mr. Drake to object to the subpoena, the time limits for such an objection and where to file the objection. [Request Exhibit B.]

On November 11, 2016 at 3:45 p.m., Mr. Drake was personally served with that subpoena. [Request Exhibit A.] Mr. Drake appeared for the deposition but produced none of the subpoenaed documents. [Request Exhibit D.]

Mr. Drake was given until December 12, 2016 to provide the State Bar with the subpoenaed documents but has failed to do so. [Request Exhibit C.] Mr. Drake has not requested a protective order, objected to the subpoena under Rule 47(i), Civil Rule 45(c)² or otherwise requested judicial relief from the discovery sought. There is no evidence he has tried or been unable to submit the required discovery. He had no reasonable explanation for his failure to disclose the documents sought. His failure to supply the required documents was done knowingly.

² Civil Rule 45(c) is applicable under Supreme Court Rule 48(b).

Effective default was entered against Mr. Drake on February 14, 2017, in PDJ 2016-9131. An aggravation/mitigation hearing has been set for March 7, 2017 at 2:00 p.m. before the assigned hearing panel.

CONCLUSIONS OF LAW

Under Rule 47(h)(4)(A), when a person subpoenaed to produce books, paper or documents as required by the subpoena, refuses to comply, that person may be subject to civil contempt proceedings. Under Rule 47(h)(4)(B), a party may file with the PDJ a verified notice and request for order to show cause. Under that Rule, if it appears to the PDJ that the subpoena was regularly issued and no good cause is shown for failing to comply with a subpoena, the PDJ may issue an order holding the person in contempt and impose reasonable sanctions, which among other possibilities may be summary suspension of the Respondent to ensure compliance with the subpoena. Upon verification of compliance with the subpoena, the PDJ shall enter an order of reinstatement.

IT IS ORDERED finding **Richard A. Drake, Bar No. 025449** in contempt.

IT IS FURTHER ORDERED **Richard A. Drake, Bar No. 025449** is suspended from the practice of law effective immediately on an interim basis.

IT IS FURTHER ORDERED effective immediately, Richard A. Drake shall not accept for representation any clients and is precluded from accepting funds for that purpose.

IT IS FURTHER ORDERED freezing any trust account and operating accounts of Richard A. Drake and restraining him from making a withdrawal of funds in any manner, from any trust account or operating account without the prior written approval of bar counsel or by order of the PDJ which shall be applied for by formal written motion.

IT IS FURTHER ORDERED Richard A. Drake may purge his contempt by the full and complete delivery of the documents sought by Bar Counsel, proof of which shall be reported to Bar Counsel and by written notice sworn under oath by Mr. Drake and filed with the Disciplinary Clerk.

IT IS FURTHER ORDERED the interim suspension of the bar license of Richard A. Drake shall continue until upon verification of compliance and the PDJ issues an order of reinstatement.

IT IS FURTHER ORDERED under Supreme Court Rule 72(a), Richard A. Drake shall notify all of his clients of the terms of this order within ten (10) days and shall timely file with the Disciplinary Clerk and the Supreme Court, notice of compliance with this Order as provided by Rule 72(e), Rules of the Supreme Court of Arizona.

DATED this 23rd day of February, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing e-mailed
this 23rd day of February, 2017, and
mailed February 24, 2017, to:

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